

Developing a Framework for Regulating Solid Waste in Arizona

June, 2007

Key Statutes

ARS § 49-761(A) mandates ADEQ to adopt rules regarding the storage, processing, treatment and disposal of solid waste; elsewhere referred to as “design and operating” rules

Key Statutes

- Several statutory provisions, e.g., ARS §§ 49-761(G) and (H), authorize rules for “solid waste facilities.”
- “Solid waste facility” means a transfer facility and any site owned, operated or utilized by any person for the storage, processing, treatment or disposal of solid waste, (CESQG) waste or household hazardous waste...[ARS § 49-701(29)]

Why Develop a Comprehensive Framework Now?

- Need for basic environmental controls to minimize the risk of handling SW
- Address AZ's regulatory gap as compared to other states in Southwest
- Expect increase in activity as AZ grows and economy expands

- Provide a sensible structure that leads to consistent application
- Long past due

Long Past Due

- Mandate to do SWF rules extends back to early 80s at least
- Transferred to ADEQ in 1987
- Mandate to implement the tiered approach since 1996

Regulatory Gap

AZ's Current Regulatory Program

- Mostly based on statutory provisions
- MSWLFs: 40 CFR Part 258 incorporated by statute
- Non-MSWLFs: 40 CFR Part 257 + APP statutes and rules
- Some waste streams regulated by rule:
 - Waste tires; biohazardous medical waste; special waste; human excreta

All other SWFs are subject to ARS 49-762.07

- All solid waste facilities must file a notice
- Notice includes:
 - Name and mailing address
 - Legal description
 - Description of equipment and methods
 - Description of management practices
 - Diagram showing location of facility on property

ARS 49-762.07

Operational Requirements

- Control wind / surface dispersion of SW
- Do not discharge hazardous substances to surface water, groundwater, or subsurface soil
- Control vector breeding and fire hazards
- Control access to medical waste and special waste

Six State Comparison

- Looked at **the rules** from UT, NV, NM, CO, TX, WA
- AZ regulates significantly fewer
 - **Waste Streams**
 - **Types of Solid Waste Facilities**

ADEQ is concerned that the

Regulatory Gap =
Protection Deficit

ADEQ has been monitoring
developments related to solid
waste handling

Headlines provide a quick
summary of some of the issues

Minimizing the risk of handling SW:

- *“Recycling facility burns for 3rd time”*
- *“Weird Science: Shifting explanations cloud proposed [trash to energy] facility”*
- *“Chemical disposal imperils trash crew”*
- *“Fire shuts metal recycling business”*
- *“Turn your CPU into powder: city will collect and pulverize old computers”*

Impact of growth:

- *“Transfer station in county supes’ plans”*
- *“County may ask city aid with landfills”*
- *“County has eye on recycling to relieve landfill”*
- *“Regional landfill has only 7 years before it’s full; seeks Forest Service land”*

Stakeholder Discussion

The Critical Issue :

*What is the appropriate
level of regulation?*

“Appropriate”

- Address environmental and public health risks?
- Consistent with statutory mandates?
- Position AZ in regulatory mainstream?
- Minimize negative incentives?
- Market neutral?
- Practical and effective?
- Considers Small Business Impact?

Assumptions

- Harmonize, to the best of our ability, current SW statutory provisions
- Harmonize with other statutory requirements, such as Water Quality, Licensing Time Frames
- Provide clarity for transition of existing facilities

- Not disrupt, at this point, regulatory approaches already in place, e.g., special waste, biohazardous medical waste
- Address issues identified by stakeholders

Design and Operating Rules:

Substantive Requirements
Based on the Life-Cycle of
a Solid Waste Facility:
Siting to Post-closure

We assume that there will be Basic
Substantive Requirements that
should apply to ALL Solid Waste
Facilities

Basic Substantive Requirements for All Solid Waste Facilities

- Siting Criteria
- Stormwater Run-on Run-off Control
- Waste Identification and Screening
- Control of Public Access
- Signage
- Emergency Communications Capacity
- Dust Control
- Litter Control
- Vector Control
- Open Burning Ban
- Closure Requirements

ADEQ believes that responsible handlers of solid waste are already complying with these basic requirements as sound business practices

We assume that there will be
Substantive Requirements that will
apply to Solid Waste Facilities

ACCORDING TO FACILITY TYPE

Substantive Requirements

- Benchmark with other states
- Identify the best
- Modify to fit AZ's needs

We assume that there will be a
Procedural Framework for
Assuring Compliance with
Substantive Requirements

Basic Procedural Requirements for All Solid Waste Facilities

- Solid Waste Facility Notice
- Facility operational plan
- Facility operating record
- Annual report
- Financial assurance

ARS 49-770: Financial assurance requirements for SW Facilities

- Beginning 180 days after effective date of design and operation rules, new SW facilities can't operate unless financial responsibility is demonstrated
- Must cover the cost of closure, post-closure and corrective action for known releases
- Existing facilities must demonstrate FR but may continue operation

Landfills

Significant policy decision: ADEQ will
fully implement its statutory authority
to apply APP standards to landfills

ARS 49-761 (B) and (C)

Conditionally Exempt Small Quantity Generator Waste

ADEQ assumes that it should address the handling of this hazardous waste in the solid waste stream

Other Matters to Be Addressed

- Regulatory overlap with APP, other WQ programs
- Definitional issues:
 - Recycling site [exempt] v. recycling facility [subject to regulation]
- Transition issues

Fees

- Implement Self-certification Registration Fees; ARS 762.05(H)
- Increase Hourly Rate for Plan Review Fees; ARS 49-762.03(F)
 - ADEQ costs to be reviewed annually
 - Last updated in 2002

Resource Question

- ADEQ must review and approve demonstrations of Financial Assurance for ALL solid waste facilities
- Lack clear authority to charge fees for mandated review for BMP and self-cert facilities
- How to create an efficient, fair system for facility O/Os?

Tiered Regulatory Approach

How a Facility Demonstrates
Compliance

5 Tiers

- Exempt
- “Subject to Inspection”
- “Subject to Best Management Practices”
 - referred to as BMPs
- “Subject to Self-Certification”
 - referred to as self-cert
- “Subject to plan approval”

Exempt

- Numerous exemptions from the definitions of:
“Solid waste” [ARS §§ 49-701.01 and 49-701.02],
and
“Solid waste facility” [ARS § 49-701(29)(a)-(s)]
- Waste streams and facilities fall out of the conventional solid waste regulatory framework

Subject to Inspection

- Applies to all solid waste facilities [ARS § 49-763];
- Also applies to “sites that store, treat, or process recyclable solid waste” [but note that these sites are also exempt]
- To ensure compliance with ARS § 49-762.07(F) standards ***until*** design and operation rules are established

Subject to Best Management Practices

- ARS § 49-762.02; **but** “best management practice” not defined
- Applicable to specified facilities:
 - Transfer facilities ($\leq 180\text{yds}^3/\text{day}$)
 - Off-site recycling facilities ($\leq 180\text{yds}^3$ storage capacity and store ≤ 90 days)
 - On-site closed loop recycling facilities
 - Sites which store ≥ 500 and ≤ 5000 tires
 - SW facilities handling asbestos containing waste

Subject to BMPs

- A variant of “permit by rule” whereby authorization to operate is achieved by conformance with applicable rules
- Nothing “issued” or approved for design and operation
- Compliance assured through Inspection, Compliance and Enforcement (ICE) activity

Subject to Self-Certification

- ARS § 49-762.01
- ARS § 49-762.05 describes some procedures for obtaining self-certification
- Facilities subject to self-certification identified by process of elimination:
applies to solid waste facilities not subject to BMPs, and not subject to plan approval

Subject to self-cert

- Another variant of “permit by rule”
- Certified documentation of compliance with standards
- Nothing “issued” or approved for design and operation
- Compliance assured through ICE activity

Self-certification is a default category

- ADEQ has authority to re-designate self-cert facilities to the BMP category
- A BMP facility may become a self-cert facility through a compliance action

Basis for self-certification?

- ADEQ assumes that O/O can only certify to compliance with standards based on appropriate technical expertise
- Considering a requirement that design, construction, and operational standards must be “sealed by a third-party professional engineer registered in AZ”

Subject to Plan Approval

- ARS § 49-762 identifies 6 categories of facilities subject to plan approval:
 - Solid waste land disposal facilities
 - Biosolids processing facilities
 - Medical waste facilities
 - Special waste facilities
 - Municipal solid waste landfills
 - Commercial or government owned household waste composting facilities

Subject to Plan Approval

- A “classic” permitting process: application with detailed technical demonstrations reviewed by PRU
- Authorization to operate conveyed by “issuance” of plan approval
- Compliance achieved by imposition of permit conditions and ICE activity

Stakeholder Discussion

Types of Solid Waste Facilities
that may be affected by this
rulemaking include:

- ☐ Municipal Solid Waste Landfills
- ☐ Solid Waste Land Disposal Facilities
 - ☐ Non-MSWLFs
 - ☐ Surface Impoundments
 - ☐ Waste Piles
- ☐ Recycling
 - ☐ Material recovery
- ☐ Intermediate Solid Waste Handling Facilities
 - ☐ Transfer facilities
 - ☐ Drop boxes
 - ☐ Baling and compaction
- ☐ Composting Facilities
- ☐ Treatment Facilities
 - ☐ Incinerators
 - ☐ Other

Types of Solid Waste Facilities: Regulatory Tier Designation

Type of Solid Waste Facility or SW Handling Activity	Exempt as an SWF, but may be subject to Art. 3	Inspection	Best Management Practices	Self-Certification	Plan Approval	Notes: Citations; Definitions; Examples; Cross-references
						53

Handling of Solid Waste Other than at Solid Waste Facilities

Possibility of Amending

AAC Ch13, Art 3

“Refuse and Other
Objectionable Wastes”

Article 3 currently addresses:

- Responsibility
- Inspection
- Collection required
- Storage on premises
- Frequency and place of collection
- Vehicles
- Methods of Disposal

Article 3 constitutes the core of ADEQ's SW Delegation Agreements with Counties

- Inviting Counties to suggest changes

Next Steps

- Continue to engage stakeholders over the summer and early fall
- Educate: existing program, overview of key rule concepts
 - Stakeholder input on key rule concepts and additional requests

- Tucson: Monday, June 11
 - 1:30pm, State Office Bldg., DES Conf. Rm
 - 6:00pm, State Office Bldg., DES Conf. Rm
- Phoenix: Monday, June 18
 - 1:30pm, Carnegie Center, 1101 W. Washington
 - 6:00pm, ADEQ, Room 250
- Flagstaff: Wednesday, June 20
 - 1:30pm, Lone Tree Community College
 - 6:00pm, Lone Tree Community College

- Distribute rule text in August
- Workshops on rule text in September and October
- File Notice of Proposed Rulemaking by the end of the year

Other thoughts?

- Send an e-mail to Martha Seaman:
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- Or call 602-771-2221